

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VICTORIA JOHNSON,) CASE NO. 1:13 CV 2012
)
Plaintiff,)
)
v.) JUDGE DONALD C. NUGENT
)
UNIVERSITY HOSPITALS)
PHYSICIAN SERVICES,) MEMORANDUM OPINION
) <u>AND ORDER</u>
Defendant.)

This matter is before the Court on the Motion to Strike Reply Brief filed by Plaintiff, Victoria Johnson. (Docket #39.) Plaintiff asks the Court to strike those portions of the Reply Brief filed by Defendant, University Hospitals Physician Services, that raise the "honest belief" defense, arguing that Defendant waived the defense by not including it in any of the answers that it has filed in this case.

Federal Rule of Civil Procedure 8(c) requires certain affirmative defenses be stated in the answer. Fed. R. Civ. P. 8(c)(1). "The purpose of Rule 8(c) is to give the opposing party notice of the affirmative defense and a chance to rebut it." *Moore, Owen, Thomas & Co. v. Coffey*, 992 F.2d 1439, 1445 (6th Cir. 1993) (citing *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 350, 91 S. Ct. 1434, 28 L. Ed. 2d 788 (1971)). However, a

defendant does not waive an affirmative defense if the defense is raised at a time when plaintiff's ability to respond is not prejudiced. *Id.* (citing *Lucas v. United States*, 807 F.2d 414, 418 (5th Cir. 1986)).

The Court has carefully considered Plaintiff's Motion to Strike. The Court notes that this case has been pending for less than a year, only a short period of time has passed since Defendant's Amended Answer to Plaintiff's First Amended Complaint, and it appears that all relevant depositions and discovery have been completed. Accordingly, the Court will permit Defendant to raise the affirmative defense of honest belief, allowing Plaintiff to file a response thereto no later than August 14, 2014. Plaintiff's ability to respond will not be prejudiced, as she will have the same opportunity to respond as she would have if the defense had been included in Defendant's initial summary judgment brief, filed less than two months ago. In the event Plaintiff believes additional discovery is necessary to the preparation of a response, Plaintiff shall notify the Court no later than August 7, 2014, so that additional time may be provided and any scheduled deadlines may be adjusted.

Plaintiff's Motion to Strike (Docket #39) is, therefore, DENIED.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: August 1, 2014